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HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.90 of 2004

APPELLANT:
(In Jail)

Balram @ Guddu, S/o Sartikram Sahu, age 29 years, R/o Darogapara, Raigarh, P.S. City Kotwali, Raigarh, C.G.

- Versus -

RESPONDENT:

The State of Chhattisgarh, through P.S. Jaijaipur, Dist. Janjgir-Champa, C.G.

JUDGMENT FOR CONSIDERATION

Sd/-
L.C.BHADOO
Judge
5-5-2007

HON'BLE MR. JUSTICE DHIRENDRA MISHRA

Sd/-
DHIRENDRA MISHRA
Judge

POST FOR PRONOUNCEMENT OF JUDGMENT ON 9th MAY, 2007

Sd/-
L.C.BHADOO
Judge

(190)

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- Versus -

RESPONDENT: — The State of Chhattisgarh, through P.S. Jaijaipur, Dist. Janjgir-Champa, C.G.

(Criminal Appeal under Section 374 (2) of the Criminal Procedure Code)

Present:

Shri G.S. Ahluwalia, Advocate: For the appellant.

Shri U.N.S. Deo with Shri D.K. Gwalre

Additional Public Prosecutors: For the State/respondent.

CORAM: - HON'BLE SHRI L.C. BHADOO AND

HON'BLE SHRI DHIRENDRA MISHRA, JJ.

JUDGMENT

(Delivered on 9th May, 2007)

The following judgment of the Court was delivered by ***L.C. Bhadoo, J***: -

(1) By this appeal under Section 374 (2) of the Cr.P.C. the accused/appellant has questioned legality and correctness of the judgment of conviction and order of sentence dated 24-12-2003 passed by the Additional Sessions Judge, Sakti, in S.T. No.203/2002 whereby learned Additional Sessions Judge after holding the accused/appellant guilty for commission of offence under Sections 302/149, 326/149, 323/149 & 148 of the I.P.C., sentenced him to undergo imprisonment for life & to pay a fine of Rs.5,000/-, in default of payment of fine to further undergo R.I. for one year under Section 302/149 of the I.P.C.; to undergo R.I. for 3 years & to pay a fine of Rs.1,000/-, in default of payment of fine to further undergo R.I. for 3 months under Section 326/149 of the I.P.C.; to undergo R.I. for 3 months for causing injuries to Radha Bai & to

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undergo R.I. for 3 months for causing injuries to Bahadur under Section 323/149 of the I.P.C. and to undergo R.I. for 1 year under Section 148 of the I.P.C. It was further directed that on deposit of fine amount of Rs.6,000/-, same shall be paid to the legal heirs of Dular Sai and Tara Bai in equal share.

(2) Admitted facts of the prosecution case are that deceased Dular Sai and Tara Bai were residents of village Taldeori. The accused persons were having animosity against the deceased persons and complainant party because daughter of accused Prem Sagar namely, Savitri was not being sent to her matrimonial house, therefore, a meeting of Sahu Samaj was convened, in that meeting, Prem Sagar was asked to send his daughter to the matrimonial house. When he did not accede to the decision of Samaj, he was ostracized by the Samaj. The complainant party did not help accused Prem Sagar. Further ground of animosity was that accused Roop Singh lodged a report against Johan and others for commission of offence under Sections 452, 147, 148, 294, 325 and 506 of the I.P.C., for which a criminal case No.642/97 was pending.

(3) The case of the prosecution, in brief, is that at about 6.30 a.m. in the morning of 25-7-94 Dular Sai along with his son Johan went to take bath in a pond (Bade Talab) of village Taldeori. After taking bath, Dular Sai was going to temple of Mata Choura, at that time, the accused persons appeared on the scene of occurrence carrying lathi, battle axe, axe and sickle in their hands and started beating Dular Sai, as a result of which he succumbed to the injuries spontaneously. The accused persons also attacked Tara Bai, as a result of which she also sustained injuries. While she was being taken to the hospital, on the way, Tara Bai succumbed to the injuries. When Gangaram, Radha Bai, and Bahadur came on the scene, they were also attacked by the accused persons. Johan was also attacked. He ran away and lodged report Ex.-P/3-C in the police station Jaijaipur which was registered at S. No.78/94 for commission of offence under Sections 302 and 307 of the I.P.C. Chamar Das Kotwar gave merg intimation Ex.-P/66-C in connection with death of Dular Sai and Tara Bai.

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(4) After registering the crime, I.O. left for scene of occurrence, after giving notice Ex.-P/1-C to the Panchas, prepared inquest Ex.-P/2-C on the body of Dular Sai. Investigating Officer after giving notice Ex.-P/53-C to the Panchas, prepared inquest Ex.-P/54-C on the body of Tara Bai. The body of Dular Sai was sent for postmortem examination to the Primary Health Centre, Jaijaipur under Ex.-P/10-C where Dr. N.P. Mishra (PW-19) conducted postmortem, prepared postmortem report Ex.-P/59-C of the body of Dular Sai. He opined that cause of death of Dular Sai was as a result of shock due to extensive haemorrhage, as a result of injuries mentioned in the report. Mode of death was homicidal in nature. The body of Tara Bai was sent for postmortem to the B.D.M., Hospital, Champa, where Dr. V.K. Agrawal (PW-5) conducted postmortem, prepared report Ex.-P/6-C. He opined that cause of death was shock due to extensive haemorrhage, as a result of injuries to bones of both lower legs. Injured witnesses namely, Gangaram, Radha Bai and Bahadur were sent for examination of the injuries sustained by them in the same incident. Their injuries were examined by Dr. N.P. Gupta. After examination, injuries of Radha Bai and Bahadur were found to be simple whereas, after X-ray injuries of Gangaram were found to be grievous, as there was boney injury.

(5) After investigation and recovery of articles from various co-accused persons, charge sheet was filed in the Court of Judicial Magistrate, 1st Class, Sakti as till that time present accused/appellant was absconding, therefore, charge sheet was filed against him in his absence under Section 299 of the Cr.P.C. When present accused/appellant was apprehended, a supplementary charge sheet was filed against him in the Court of Additional Chief Judicial Magistrate, Sakti, who in turn committed the case to the Sessions Judge, Bilaspur, from where learned Additional Sessions Judge received the case on transfer for trial. Earlier other accused persons had faced S.T. No.81/95.

(6) The prosecution examined 23 witnesses at the trial in order to establish charge against the accused/appellant. Statement of the accused was recorded under Section 313 Cr.P.C. in which he denied material appearing against him in the prosecution evidence. He stated that he is innocent and has been falsely implicated in the crime. He examined one witness namely, Rajesh Khare in his defence.

(7) Learned Additional Sessions Judge after hearing learned counsel for the respective parties, convicted and sentenced the accused/ appellant as aforementioned.

(8) We have heard learned counsel for the parties.

(9) Learned counsel for the accused/appellant has not disputed homicidal death of Dular Sai and Tara Bai. Moreover, eyewitnesses namely, PW-1 Loknath Patel, PW-2 Lakheshwari Sahu, PW-3 Sukhiram, PW-4 Johan, PW-9 Rohanlal, PW-10 Radha, PW-11 Ghasiya, PW-12 Suresh Kumar and PW-13 Tularam have categorically stated that the accused persons attacked the deceased persons with lathis, axe, battle axe and other deadly weapons, as a result of which they died on account of injuries inflicted by the accused persons. Dr. N.P. Mishra and Dr. V.K. Agrawal who conducted postmortem on the bodies of the deceased persons have also stated that death of Dular Sai and Tara Bai was homicidal in nature. Therefore, in view of the above ocular and medical evidence, it is established that death of the deceased persons was homicidal in nature.

(10) As far as involvement of the accused/appellant in the crime in question is concerned, learned counsel for the accused/appellant argued that in the first instance the prosecution has not been able to establish with cogent and legal evidence presence of the accused/ appellant at the scene of occurrence. He also argued that in order to involve the accused in a false case, first information report Ex.-P/3-C was registered by the Police Station Jaijaipur in ante time at 8.30 a.m. The case of the prosecution is that the incident happened in between 6.30 a.m. to 7.30 a.m. in village Taldeori which is at a distance of about 13 km from the police station Jaijaipur, therefore, it was not possible in the village side to reach and lodge report. He further argued that merg intimation Ex.-P/66-C was lodged by Chamar Das Kotwar at about 18.00 hours whereas, first information report Ex.-P/3-C was lodged at 8.30 a.m.. In this merg intimation, the name of the present accused/ appellant was not mentioned.

(11) On the other hand, Shri U.N.S. Deo, Additional Public Prosecutor supported the judgment of the trial Court.

(12) In order to appreciate argument advanced by learned counsel for the respective parties, we have perused evidence available on record and judgment of the trial Court. One of the injured witnesses namely, Gangaram had died after recording of his evidence in the earlier sessions trial but he could not be examined in this case on account of his death. In this case, following independent witnesses except PW-11 have been examined by the prosecution: PW-1 Loknath Patel in front of whose house incident took place, PW-3 Sukhiram, PW-11 Ghasiya, son of deceased Tara Bai, PW-12 Suresh Kumar and PW-21Budhdhuram. PW-1 Loknath Patel has stated that on the fateful day he was at his residence. At about 7 to 7.30 a.m. Dular Sai after taking bath in pond went to the temple for performing Pooja, at that time, accused Sukhsagar, Prem Sagar, Hem Charan, Raj Kumar, Tekram, Hemlal, Pitambar, Sunderlal, Balram Sahu and others came on the scene of occurrence. They started attacking Dular with axe and lathis. He became frightened and entered his house. In para-3 of his evidence, he has categorically stated that he does not know that accused Balram @ Guddu is resident of which village. The accused persons who attacked Dular, they attacked Tara Bai, Gangaram and wife of Dular Sai. Dular Sai died on the spot whereas, Tara Bai was taken to the hospital at Champa for treatment where she succumbed to the injuries on the way. In para-1 of his evidence, he has stated that he does not know the accused/appellant. Neither he met the accused earlier nor he saw the accused earlier. In para-6 of his evidence, he has categorically stated that at the time of commission of crime the accused was not present at the scene of occurrence.

(13) PW-3 Sukhiram has also stated that the accused is not known to him. He never saw him earlier. Even he does not know whether the accused is resident of village Taldeori or not. He never saw the accused in the village. In para-3, he has stated that at the time of commission of crime the accused was not present at the scene of occurrence. Again in para-5, he has categorically stated that the accused had not participated in the crime in question. He was not present at the scene of occurrence. PW-11 Ghasiya, son of deceased Tara Bai, in his evidence has stated that he knows accused Balram who is present in the Court. In para-2 he has stated that at the time of commission of crime Balram was not at the place of occurrence. When he reached on

the spot except the accused other accused persons were present at the scene of occurrence. PW-12 Suresh Kumar has stated that accused Balram @ Guddu is known to him. He did not see him at the place of occurrence or attacking the deceased persons. He was not present at the place of occurrence. In para-7 of his cross-examination, he has stated that all the accused persons who attacked the deceased and injured persons were of village Taldeori. There was no outsider.

(14) PW-21 Budhdhuram, independent witness, has also stated that he does not know accused Balram @ Guddu. He never saw him. He has stated that he saw the incident. At the time of incident he did not see the accused at the place of occurrence. He is seeing him for the first time in the Court. In para-4, he has stated that the accused present in the Court is not of his relation, even he is not knowing this person. Therefore, all the above four independent eyewitnesses as well as PW-11 Ghasiya, son of Tara Bai (deceased) have categorically stated in their evidence that the accused was not present at the scene of occurrence. Even PW-11 Ghasiya, son of deceased Tara Bai, has not supported the prosecution case regarding involvement of the accused/appellant in the crime in question.

(15) As far as evidence of relative witnesses is concerned, PW-2 Lakheshwari Sahu has stated that the accused was holding weapon i.e. battle axe, which was just like Tabbal whereas, PW-4 Johan, son of deceased Dular, has stated that the accused was holding iron weapon "Khada", just like sword. PW-9 Rohanlal has stated that when he heard cries of Dular Sai 'save save' he came out from his house and saw that accused persons were attacking with lathi, spear, Khada, Bhujali, Kalari, sickle and Tabbal. When he reached, all persons rushed towards him, therefore, he entered his house. The accused was holding "Khada" in his hand. In para-10, he has stated that the accused was holding Khada just like sword. If same is not mentioned in the police statement Ex.-D/3-C he cannot assign any reason for that. Therefore, evidence of this witness regarding weapon the accused was carrying is contradictory. In his police case diary statement, it has not been stated that the accused was carrying Khada, just like sword in his hand. He has made improvement in the Court evidence. PW-10 Radha, injured witness, has stated that the accused was carrying weapon like sword

and with that he attacked. She has further stated that the accused attacked on her thigh region and knee with sword, whereas, no such injury was found in her injury report that it was caused by sword on her thigh region and knee. In para-8 of her cross-examination, she has stated that if in her police case diary statement Ex.-D/4-C it is not written that she was attacked by the accused with sword, she cannot assign any reason. She has further stated that in the earlier Sessions Trial No.81/95 (Sukhsagar & others) if she has not stated that the accused was carrying Khada, there may be contradictions in that. She does not know why this fact has not been mentioned in the police case diary statement Ex.-D/4-C & Ex.-D/5-C. PW-13 Tularam has stated that the accused was holding Khada, like sword, in his hand. Again in cross-examination, he has stated that if this fact is not mentioned in the police case diary statement Ex.-D/6 he cannot assign any reason. While giving statement to the police he disclosed that the accused is the resident of Raigarh. He was carrying sword in his hand. If the same is not mentioned in the police case diary statement Ex.-D/6, he cannot assign any reason.

(16) PW-15 Mehattar Sahu has stated that he was not at the place of incident as people asked him not to go. Therefore, if evidence of these five relative witnesses is scrutinized, then in the first instance, there is contradiction with regard to weapon of offence. In the evidence of PW-2 Lakheshwari Sahu, she has stated that the accused was carrying Tabbal whereas other four witnesses have stated that he was carrying Khada like sword. Moreover, these witnesses have not stated about the weapon in their statements before the police recorded under section 161 Cr.P.C., therefore, they have made improvement in their Court evidence. It is also worth to note that no weapon has been recovered from the accused, therefore, evidence of these relative witnesses has to be scrutinized with care and circumspection because there was attack by number of persons, there was animosity between complainant party and the accused party, therefore, there was every likelihood of false and over implication, particularly, when independent witnesses who were on the spot have categorically stated that the present accused/appellant was not present at the scene of occurrence. It is not like that these independent witnesses have not supported the prosecution case. They have not been declared hostile or cross-examined by the prosecutor on

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the aspect of this accused. Evidence of relative witnesses is not sterling worth and reliable for the reason that they have made improvement in their evidence before the Court because in the earlier police case diary statements, they have not stated that the accused was carrying Khada like sword in his hand. Even Radha injured witness, has stated that the accused attacked on her thigh region and knee but no such injury was found when she was examined. PW-2 Lakheshwari Sahu has stated about different kind of weapon the accused was carrying. Therefore, in the circumstances, evidence of relative witnesses does not inspire full confidence of the Court for the above stated reasons.

(17) For the foregoing reasons, we are of the considered opinion that the prosecution has failed to establish presence and involvement of the accused in the crime in question by adducing legal and clinching reliable evidence. It is admitted position that charge sheet was filed against 25 persons and he is 26th person, therefore, large number of persons were involved and allegation was made against large number of persons involving in the crime and none of the independent witnesses has stated about involvement and presence of the accused/appellant at the scene of occurrence. Therefore, conviction of the accused for commission of offence under Sections 302 read with Section 149, 326 read with Section 149 of the I.P.C., as also 323 read with Section 149 of the I.P.C. for attacking two persons and Section 148 of the I.P.C. cannot be sustained and same are liable to be set aside.

(18) In the result, the appeal succeeds. Conviction and sentence imposed upon the accused/appellant under Sections 302 read with Section 149, 326 read with Section 149, 323 read with Section 149 and 148 of the I.P.C. are set aside. He is acquitted of the above charges. The accused/appellant is said to be in detention for about more than 5 years 4 months, therefore, he be set at liberty forthwith, if not required in any other case.

Sd/-
L.C.BHADOO
Judge

Sd/-
DHIRENDRA MISHRA
Judge

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